

Ontario employers face tough new violence laws

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Companies will soon have to shoulder greater responsibility in ensuring employees are safe and free from harassment

There were plenty of warning signs of trouble in the months before nurse Lori Dupont's final shift at Hôtel-Dieu Grace Hospital in Windsor, Ont.

In February of 2005, she had broken up with Marc Daniel, a 50-year-old married anesthesiologist, after he tried to kill himself. The two had met while working in the hospital, where Dr. Daniel had a history of harassing nurses, both verbally and physically.

When he was released from hospital after his suicide attempt, Dr. Daniel returned to work, where he intimidated and stalked Ms. Dupont, a 36-year-old single mother. He left compromising photos of her on her car and threatened to distribute them. He was suspended, but soon back at work again, on the recommendation of a psychiatrist.

On the morning of Nov. 12, when the pair were on a shift together, Dr. Daniel hid behind a pillar in the recovery room. Minutes later, he stabbed Ms. Dupont to death, plunging a hunting knife into her upper chest and back seven times. He was later found in his car, with a syringe in his arm and no vital signs. He died three days later in the same hospital.

Almost five years later, new workplace violence and harassment rules prompted by Ms. Dupont's death are set to take effect in Ontario. On June 15, employers in the province will have to comply with the major changes to the provincial Occupational Health and Safety Act, contained in amendments known as Bill 168.

Other provinces, including Quebec, Manitoba, Saskatchewan and Alberta, have some comparable legislation, but some legal experts say Ontario's new rules are vague in places and leave questions that will likely have to be answered in court.

And employment lawyers in Ontario say that with the deadline now less than three months away, many of the province's corporations are only now coming to grips with the changes.

Under the coming regulations, employers will have to conduct workplace violence risk assessments, draft new policies on workplace violence and harassment, and warn employees if they could be exposed at work to someone with a violent past.

Employees will also have the right to refuse to work if they feel they are at risk of workplace violence.

The reforms also broaden the definition of workplace harassment, which is currently limited to sexist, racist or other comments covered by the Ontario Human Rights Code. Now, harassment will be defined as including "course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome."

Janice Rubin of Rubin Thomlinson LLP in Toronto, said the new definition could mean big changes to the tone of some workplaces in which "yelling and screaming" are still common.

"It's sort of like a quiet revolution of workplace behaviour," she said.

But Ms. Rubin said the new rules won't necessarily force workers to tiptoe around each other: "I don't think it's going to cover an isolated incident of rudeness, or someone having a bad communication day. I think it likely is going to cover ... a pattern of demeaning, bullying behaviour."

Many big, sophisticated employers with human resources department already have anti-harassment policies. But Ms. Rubin warns those companies may have to revise their policies to ensure they are up-to-date.

"They might have a very traditional human rights policy that sets out, 'Thou shalt not grab a bum, or thou shalt not make a homophobic comment,'" Ms. Rubin said. "It may not cover this extra element of workplace harassment."

Ontario's new definition has some employers worried that it will be used by problem employees to strike back at managers who scold them for being late or doing a bad job, said Adrian Miedema, a partner in the employment group of Fraser Milner Casgrain LLP in Toronto.

Another provision obligates an employer to warn employees if its knows, or should know, that a worker could come into contact with a person with a history of violence. Employers will also be also be required to warn of a similar risk of domestic violence - an obligation that immediately raises questions for many employers about privacy laws, Mr. Miedema said.

"The practical question is, can you go around and tell all your workers, 'Well, you know, John Doe has made some threats and we're concerned about him coming in, and if you see him, call this number?'" he said.

"My approach is, if there's a realistic and reasonable concern that someone poses a serious safety risk, you're not generally going to be criticized by over disclosing."

Robb Macpherson, a partner with McCarthy Tétrault LLP in Toronto, points out that most workplace violence or harassment is not an issue of management versus employee: It is usually a dispute between two equal co-workers. And employers can't always monitor everything their staff does.

"You don't have a hundred supervisors watching hundred employees. You have one or two," he said.

"This legislation is an interesting piece of social engineering which imposes pretty significant obligations on employers to manage a situation that is not entirely within their control."

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